

EUGENE L. FARISH
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September 7, 2011

230925

VIA: E-FILING
Ms. Cynthia T. Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: FD 35496, Denver & Rio Grande Railway Historic Foundation
Petition for a Declaratory Order

Dear Ms. Brown:

Enclosed for filing is the City of Monte Vista's *Response to Petitioner's Request to Late File* in case #35496, as above referenced. Thank you.

Yours very truly,

Eugene L. Farish
Attorney at Law

ELF/jmw

Enclosure

SEP 07 2011
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. FD35496

RESPONSE TO PETITIONER'S REQUEST TO LATE FILE

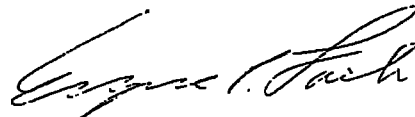
The City of Monte Vista, Colorado, a Municipal Corporation, files this *Response to Petitioner's request to Late File*, in case #35496, filed by Donald H. Shank, dba/Denver & Rio Grande Railway Historical Foundation.

The City of Monte Vista BY AND THROUGH ITS ATTORNEY, Eugene L. Farish, replies as follows:

1. City of Monte Vista opposes Petitioner's request.
2. Petitioner offered no justifiable reason why such request should be granted.
3. The District Court of Rio Grande County, Colorado has already granted Petitioner a 30 day extension from and after the 22nd day of August, 2011, to file his *Opening Brief* in the municipal court case (which is the basis of Petitioner's Petition before the STB) and upon which he was convicted of violations of the Monte Vista municipal code on April 1, 2011.
4. The basis of Petitioner's *Motion for Extension of Time* to file his brief in the District Court was that the STB had not yet made a decision and that the STB's decision would be dispositive of the issue. The *Motion for Extension* was not opposed by the City and was granted by the Court.
5. While this matter is pending the Petitioner has continued to locate and store his dilapidated railcars and debris in the heart of the City's commercial business district as described in the City's response. Said wreckage and junk will continue to contribute to city blight until this matter is resolved by the Surface Transportation Board.
6. The allowance of late and further pleadings will only contribute to the delay of expeditious resolution of this case.

Wherefore, Respondent requests that Petitioner's Motion be denied.

Respectfully submitted,



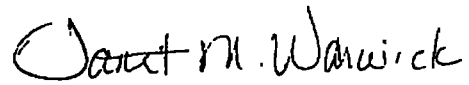
Eugene L. Farish, P. C.
P. O. Box 430
Monte Vista, CO 81144
719-852-5101
City Attorney
City of Monte Vista

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2011, I mailed a copy of the foregoing, *Response to Petitioner's Request to Late File*, by United States mail, postage prepaid, to:

Donald H. Shank
Denver & Rio Grande Railway
Historic Foundation
20 N Broadway St.
Monte Vista, CO 81144

John D. Heffner
John D. Heffner, PLLC
1750 K Street, NW, Ste.200
Washington, DC 20006

A handwritten signature in black ink, reading "Janet M. Warwick", written over a horizontal line.

Janet M. Warwick